



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0040]

RIN 1625- AA87

Security Zone, Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone for certain waters of the Delaware River. This action is necessary to provide protection of Very Important Persons (VIPs) while attending the Democratic National Caucus (DNC) on the Delaware River in the vicinity of Penns Landing located in Philadelphia, PA. This security zone will be enforced intermittently and only for the protection of VIPs when in the area and will restrict vessel traffic while the zones are being enforced. This security zone would prohibit persons and vessels from being in the security zone unless authorized by the Captain of the Port Delaware Bay or a designated representative..

DATES: This rule is effective March 9, 2022, through March 11, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0040 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Jennifer Padilla, Sector Delaware Bay, Waterways

Management Division, U.S. Coast Guard; telephone 215–271–4889, e-mail

Jennifer.L.Padilla@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On January 12, 2022, the United States Capitol Police notified the Coast Guard that the Democratic National Caucus (DNC) is being held in the vicinity of Penns Landing located in Philadelphia, PA, from 11 a.m. on March 9, 2022, through 11:59 p.m. on March 11, 2022. The DNC is being held adjacent to the Delaware River and this security zone is needed to provide protection and security of the VIPs attending the Democratic National Caucus in the vicinity of this waterway. In response, on February 15, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Security Zone, Delaware River, Philadelphia, PA” (87 FR 8472). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this event. During the comment period that ended February 23, 2022, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest. This rule must be immediately effective to guard against potential acts of terrorism, sabotage, subversive acts, accidents, or other causes of a similar nature.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034

(previously 33 U.S.C. 1231). The Captain of the Port Delaware Bay (COTP) has determined that the presence of the VIPs attending the DNC present a potential target for terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature. Due to the DNC being held in close proximity to the Delaware River, this security zone is necessary to protect these persons, the public, and the surrounding waterway.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published February 15, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a security zone from March 9, 2022, through March 11, 2022, on certain waters of the Delaware River in Philadelphia, PA. Specifically, the security zone would cover all waters within the Delaware River contiguous to the Pennsylvania shoreline and extending out into the Delaware River approximately 250 yards within an area bounded by a line connecting the following points: beginning at the Pennsylvania shoreline at latitude 39°56.87' N, longitude 075°8.36' W, thence east to latitude 39°56.85' N, longitude 075°8.20' W, thence south to latitude 39°56.45' N, longitude 075°8.25' W, thence west to the Pennsylvania shoreline at latitude 39°56.47' N, longitude 075°8.41' W, thence north following the shoreline to the originating point.

This zone will be enforced intermittently during the effective dates. Enforcement of this zone will be broadcast via Broadcast Notice to Mariners on VHF-FM marine channel 16 as well as actual notice via on-scene Coast Guard Personnel.

No vessel or person will be permitted to enter or transit these security zones without obtaining permission from the COTP or a designated representative and must proceed as directed by on scene enforcement vessels. Any vessel permitted to transit the

zone will be required to continue through the zone without pause or delay as directed by on-scene enforcement vessels.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the duration, size, location and time of year of the zone. During this time of year, this Security Zone is primarily used by Commercial Traffic. That traffic will be permitted to transit through the zone without pause or delay upon receiving approval of on-scene enforcement vessels. This zone will only be enforced for limited durations when deemed necessary by the COTP to augment the protection of the VIPs attending the Democratic National Caucus.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have

a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and

preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone which will be intermittently enforced over the course of 3 days. It is categorically excluded from further review under paragraph L60[a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T05-0040 to read as follows:

§ 165.T05-0040 Security Zone, Delaware River, Philadelphia, PA.

(a) *Location.* The following area is a security zone: All waters within the Delaware River, contiguous with the Pennsylvania shoreline and extending out into the Delaware River approximately 250 yards, within an area bounded by a line connecting the following points: Beginning at the Pennsylvania shoreline at latitude 39°56.87' N, longitude 075°8.36' W, thence east to latitude 39°56.85' N, longitude 075°8.20' W, thence south to latitude 39°56.45' N, longitude 075°8.25' W, thence west to the Pennsylvania shoreline at latitude 39°56.47' N, longitude 075°8.41' W, thence north following the shoreline to the originating point. These coordinates are based on North American Datum 83 (NAD83).

(b) *Definitions.* As used in this section--

Designated Representative means any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Very Important Person (VIP) means any person for whom the United States Capital Police request implementation of a security zone in order to supplement protection of said person(s).

Official Patrol Vessel means any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessel assigned or approved by the COTP.

(c) *Regulations.* (1) In accordance with the general regulations contained in subpart D of this part, entry into or remaining in the zone described in paragraph (a) of section is prohibited unless authorized by the COTP, Sector Delaware Bay, or designated representative.

(2) Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or designated representative, may enter or remain in the regulated area. Access to the zone will be determined by the COTP or designated representative on a case-by-case basis when the zone is enforced. To seek permission to enter, contact the COTP or the COTP's representative on VHF-FM channel 13 or 16. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. No person may swim upon or below the surface of the water of this security zone unless authorized by the COTP or his designated representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as

directed. Failure to comply with lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(4) Unless specifically authorized by on scene enforcement vessels, any vessel granted permission to enter or transit the security zones must comply with the instructions of the COTP or designated representative and operate at bare steerage or no-wake speed while transiting through the Security Zone, and must not loiter, stop, or anchor, and shall do so for the entirety of its time within the boundaries of the security zones.

(d) *Enforcement.* (1) This security zone is effective from 11 a.m. on March 9, 2022, through 11:59 p.m. on March 11, 2022.

(2) This security zone will be enforced with actual notice by the U.S. Coast Guard representatives on-scene, as well as other methods listed in 33 CFR 165.7. The Coast Guard will enforce the security zone created by this section only when it is necessary for the protection and security of the VIPs attending the Democratic National Caucus in the vicinity of Penns Landing located in Philadelphia, PA. The U.S. Coast Guard may be additionally assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

Dated: March 03, 2022

Jonathan D. Theel,
Captain, U. S. Coast Guard
Captain of the Port, Delaware Bay.

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